

**ASSEMBLY BILL**

**No. 558**

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**Introduced by Assembly Member Portantino**

February 16, 2011

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An act to amend, repeal, and add Section 17085 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 558, as introduced, Portantino. Taxation: retirement plan distributions: penalties.

The Personal Income Tax Law, in modified conformity to federal income tax laws, imposes a penalty tax upon early distributions from qualified pension plans, as provided.

This bill would, for taxable years beginning on or after January 1, 2011, and before January 1, 2013, waive that penalty tax for any early distribution, of up to \$25,000 per taxable year, on individuals who have either exhausted or are ineligible for unemployment insurance benefits.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17085 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17085. Section 72 of the Internal Revenue Code, relating to
- 4 annuities; certain proceeds of endowment and life insurance
- 5 contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in ~~paragraph~~ paragraphs (2) and (3), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2 ½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2 ½ percent rate specified therein.

(3) *For taxable years beginning on or after January 1, 2011, and before January 1, 2013, the penalty imposed by this subdivision shall not apply to any distribution, not to exceed twenty-five thousand dollars (\$25,000) per taxable year, from a qualified pension, profit-sharing, or stock bonus plan (within the meaning*

1 *of Section 401 of the Internal Revenue Code) of an individual who*  
2 *has either exhausted his or her unemployment benefits or who is*  
3 *ineligible for unemployment benefits.*

4 (d) Section 72(f)(2) of the Internal Revenue Code shall be  
5 applicable without applying the exceptions which immediately  
6 follow that paragraph.

7 (e) The amendments made by Section 844 of the Pension  
8 Protection Act of 2006 (Public Law 109-280) to Section 72(e) of  
9 the Internal Revenue Code, shall not apply.

10 (f) *This section shall remain in effect only until December 1,*  
11 *2013, and as of that date is repealed.*

12 SEC. 2. Section 17085 is added to the Revenue and Taxation  
13 Code, to read:

14 17085. Section 72 of the Internal Revenue Code, relating to  
15 annuities; certain proceeds of endowment and life insurance  
16 contracts, is modified as follows:

17 (a) The amendments and transitional rules made by Public Law  
18 99-514 shall be applicable to this part for the same transactions  
19 and the same years as they are applicable for federal purposes,  
20 except that the repeal of Section 72(d) of the Internal Revenue  
21 Code, relating to repeal of special rule for employees' annuities,  
22 shall apply only to the following:

23 (1) Any individual whose annuity starting date is after December  
24 31, 1986.

25 (2) At the election of the taxpayer, any individual whose annuity  
26 starting date is after July 1, 1986, and before January 1, 1987.

27 (b) The amount of a distribution from an individual retirement  
28 account or annuity or employee trust or employee annuity that is  
29 includable in gross income for federal purposes shall be reduced  
30 for purposes of this part by the lesser of either of the following:

31 (1) An amount equal to the amount includable in federal gross  
32 income for the taxable year.

33 (2) An amount equal to the basis in the account or annuity  
34 allowed by Section 17507 (relating to individual retirement  
35 accounts and simplified employee pensions), the increased basis  
36 allowed by Sections 17504 and 17506 (relating to plans of  
37 self-employed individuals), the increased basis allowed by Section  
38 17501, or the increased basis allowed by Section 17551 that is  
39 remaining after adjustment for reductions in gross income under  
40 this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 21/2 percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 21/2 percent rate specified therein.

(d) Section 72(f)(2) of the Internal Revenue Code shall be applicable without applying the exceptions which immediately follow that paragraph.

(e) The amendments made by Section 844 of the Pension Protection Act of 2006 (Public Law 109-280) to Section 72(e) of the Internal Revenue Code, shall not apply.

(f) This section shall become operative on January 1, 2013.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.